

# PATENT COOPERATION TREATY

MAY 30 2006

From the INTERNATIONAL SEARCHING AUTHORITY

# PCT

To:

JONES DAY  
Attn. Markey, James G.  
222 East 41st Street  
New York, NY 10017-6702  
UNITED STATES OF AMERICA

NOTIFICATION OF TRANSMITTAL OF  
THE INTERNATIONAL SEARCH REPORT AND  
THE WRITTEN OPINION OF THE INTERNATIONAL  
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Applicant's or agent's file reference 6750-209-228		Date of mailing (day/month/year) 23/05/2006
International application No. PCT/US2005/009734		International filing date (day/month/year) 23/03/2005
Applicant  EURO-CELTIQUE S.A.		

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

**Filing of amendments and statement under Article 19:**

The applicant is entitled, if he so wishes, to amend the claims of the International Application (see Rule 46):

**When?** The time limit for filing such amendments is normally two months from the date of transmittal of the International Search Report.

**Where?** Directly to the International Bureau of WIPO, 34 chemin des Colombettes  
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70

**For more detailed instructions,** see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.
3. ☐ **With regard to the protest** against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
- ☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

**4. Reminders**

Shortly after the expiration of **18 months** from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within **19 months** from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until **30 months** from the priority date (in some Offices even later); otherwise, the applicant must, **within 20 months** from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of **30 months** (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the International Searching Authority



European Patent Office, P.B. 5818 Patentlaan 2  
NL-2280 HV Rijswijk  
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,  
Fax: (+31-70) 340-3016

Authorized officer

Marthe Oldendorf

## NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the *PCT Applicant's Guide*, a publication of WIPO.

In these Notes, "Article", "Rule", and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions, respectively.

### INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report and the written opinion of the International Searching Authority, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only (see *PCT Applicant's Guide*, Annexes B1 and B2).

The attention of the applicant is drawn to the fact that amendments to the claims under Article 19 are not allowed where the International Searching Authority has declared, under Article 17(2), that no international search report would be established (see *PCT Applicant's Guide*, Volume I/A, paragraph 296).

#### What parts of the international application may be amended?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

#### When?

Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

#### Where not to file the amendments?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 46.2).

Where a demand for international preliminary examination has been/is filed, see below.

#### How?

Either by cancelling one or more entire claims, by adding one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Administrative Instructions, Section 205(b)).

**The amendments must be made in the language in which the international application is to be published.**

#### What documents must/may accompany the amendments?

##### Letter (Section 205(b)):

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

**The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.**

## PATENT COOPERATION TREATY

## PCT

## INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 6750-209-228	<b>FOR FURTHER ACTION</b> see Form PCT/ISA/220 as well as, where applicable, item 5 below.	
International application No. PCT/US2005/009734	International filing date (day/month/year) 23/03/2005	(Earliest) Priority Date (day/month/year) 30/03/2004
Applicant  EURO-CELTIQUE S.A.		

This International Search Report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This International Search Report consists of a total of 4 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

**1. Basis of the report**

- a. With regard to the **language**, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ The international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

- b. ☐ With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, see Box No. I.

2. ☒ **Certain claims were found unsearchable** (See Box II).

3. ☐ **Unity of invention is lacking** (see Box III).

4. With regard to the **title**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the **drawings**,

- a. the figure of the **drawings** to be published with the abstract is Figure No. 1

☒ as suggested by the applicant.

☐ as selected by this Authority, because the applicant failed to suggest a figure.

☐ as selected by this Authority, because this figure better characterizes the invention.

- b. ☐ none of the figures is to be published with the abstract.

# INTERNATIONAL SEARCH REPORT

International Application No  
PCT/US2005/009734

**A. CLASSIFICATION OF SUBJECT MATTER**  
INV. A61K9/14

According to International Patent Classification (IPC) or to both national classification and IPC

**B. FIELDS SEARCHED**

Minimum documentation searched (classification system followed by classification symbols)  
A61K

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

EPO-Internal, WPI Data, BIOSIS, EMBASE

**C. DOCUMENTS CONSIDERED TO BE RELEVANT**

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	WO 02/051389 A (ASPEN AEROGELS, INC) 4 July 2002 (2002-07-04) page 4, last paragraph - page 5, paragraph 1 page 8, last paragraph - page 10, paragraph 1 claims	1-3, 10, 11, 57, 61
A	DE 43 25 465 A1 (ZENZ, MICHAEL, PROF. DR. MED., 44797 BOCHUM, DE; JURNA, ILMAR, PROF. DR) 2 February 1995 (1995-02-02) example 9	1-71
A	US 2003/143269 A1 (OSHLACK BENJAMIN ET AL) 31 July 2003 (2003-07-31) cited in the application column 3, line 31 - column 4, line 17 examples claims	1-71

☐ Further documents are listed in the continuation of box C.

☒ Patent family members are listed in annex.

\* Special categories of cited documents :

- \*A\* document defining the general state of the art which is not considered to be of particular relevance
- \*E\* earlier document but published on or after the international filing date
- \*L\* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)
- \*O\* document referring to an oral disclosure, use, exhibition or other means
- \*P\* document published prior to the international filing date but later than the priority date claimed

- \*T\* later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
- \*X\* document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
- \*Y\* document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.
- \*G\* document member of the same patent family

Date of the actual completion of the international search

10 May 2006

Date of mailing of the international search report

23/05/2006

Name and mailing address of the ISA

European Patent Office, P.B. 5818 Patentlaan 2  
NL - 2280 HV Rijswijk  
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,  
Fax: (+31-70) 340-3016

Authorized officer

Epskamp, S

# INTERNATIONAL SEARCH REPORT

International application No.  
PCT/US2005/009734

## Box II Observations where certain claims were found unsearchable (Continuation of item 2 of first sheet)

This International Search Report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☒ Claims Nos.:  
because they relate to subject matter not required to be searched by this Authority, namely:  
  
Although claims 69 and 70 are directed to a method of treatment of the human/animal body, the search has been carried out and based on the alleged effects of the composition.
2. ☐ Claims Nos.:  
because they relate to parts of the International Application that do not comply with the prescribed requirements to such an extent that no meaningful International Search can be carried out, specifically:
3. ☐ Claims Nos.:  
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

## Box III Observations where unity of invention is lacking (Continuation of item 3 of first sheet)

This International Searching Authority found multiple inventions in this international application, as follows:

1. ☐ As all required additional search fees were timely paid by the applicant, this International Search Report covers all searchable claims.
2. ☐ As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this International Search Report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☐ No required additional search fees were timely paid by the applicant. Consequently, this International Search Report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:

### Remark on Protest

- ☐ The additional search fees were accompanied by the applicant's protest.
- ☐ No protest accompanied the payment of additional search fees.

# INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/US2005/009734

Patent document cited in search report		Publication date	Patent family member(s)	Publication date
W0 02051389	A	04-07-2002	BR 0115524 A	16-09-2003
			CA 2429773 A1	04-07-2002
			CN 1481236 A	10-03-2004
			EP 1343479 A2	17-09-2003
			JP 2004516304 T	03-06-2004
			MX PA03004340 A	25-01-2005
DE 4325465	A1	02-02-1995	NONE	
US 2003143269	A1	31-07-2003	US 2004186121 A1	23-09-2004
			US 2005181046 A1	18-08-2005
			US 2004092542 A1	13-05-2004
			US 2006039970 A1	23-02-2006

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

## PCT

To:

see form PCT/ISA/220

### WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/US2005/009734

International filing date (day/month/year)  
23.03.2005

Priority date (day/month/year)  
30.03.2004

International Patent Classification (IPC) or both national classification and IPC  
INV. A61K9/14

Applicant  
EURO-CELTIQUE S.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

#### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office - P.B. 5818 Patentlaan 2  
NL-2280 HV Rijswijk - Pays Bas  
Tel. +31 70 340 - 2040 Tx: 31 651 epo nl  
Fax: +31 70 340 - 3016

Date of completion of  
this opinion

see form  
PCT/ISA/210

Authorized Officer

Epskamp, S

Telephone No. +31 70 340-2857



10/593506

International application No.  
PCT/US2005/009734

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

**Box No. I Basis of the opinion**

1. With regard to the **language**, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1 (b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material:

- ☐ a sequence listing
- ☐ table(s) related to the sequence listing

b. format of material:

- ☐ on paper
- ☐ in electronic form

c. time of filing/furnishing:

- ☐ contained in the international application as filed.
- ☐ filed together with the international application in electronic form.
- ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:



**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2005/009734

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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

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The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of

- ☐ the entire international application
- ☒ claims Nos. 69 and 70 with respect to industrial applicability

because:

- ☒ the said international application, or the said claims Nos. 69 and 70 with respect to industrial applicability relate to the following subject matter which does not require an international search (*specify*):

**see separate sheet**

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed (*specify*):
- ☐ no international search report has been established for the whole application or for said claims Nos.
- ☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:
  - ☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
  - ☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
  - ☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13 *ter.* 1(a) or (b).
- ☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☒ See Supplemental Box for further details

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US2005/009734

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**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes: Claims	4-9, 12-56, 58-60 and 62-71
	No: Claims	1-3, 10, 11, 57 and 61
Inventive step (IS)	Yes: Claims	
	No: Claims	1-71
Industrial applicability (IA)	Yes: Claims	1-68 and 71
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

PCT/US2005/009734

**Re Item III****Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

1 - Claims 69 and 70 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

2 - Present independent claims 1, 12, 40, 57 and 63 relate to a compound which has been defined by the term "adverse agent". However, this term as such is unclear (Article 6 PCT), and the description does not provide sufficient support and disclosure in the sense of Article 6 and 5 PCT for such compounds, nor is there common general knowledge of this kind available to the person skilled in the art (see point V-1). This non-compliance with the substantive provisions is to such an extent, that the search was performed taking into consideration the non-compliance in determining the extent of the search of the claim (PCT Guidelines 9.19 and 9.20).

The search of these claims was consequently restricted to the specifically disclosed "adverse agents" mentioned in the description, §§ 92-100 (see also claim 21), and to the broad concept of "opioid antagonist" (see e.g. claim 18).

**Re Item V****Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following documents:

D1: WO 02/051389 A

D2: DE 43 25 465 A

D3: US 6,696,088 B

**Clarity, support, disclosure**

1 - The term "adverse agent" *per se* is vague and unclear and does not allow the skilled person to determine the scope of protection sought. Furthermore, the definition of the term "adverse agent" given in the description (§§ 36, 92) implies that the dosage form must contain another active agent in order for a pharmaceutical agent to be called an "adverse agent", while in e.g. claim 1 no other pharmaceutical agent than the adverse agent is defined. Thus the term "adverse agent" without its relation to another active agent is

essentially meaningless.

Consequently independent claims 1, 12, 40, 57 and 63 lack clarity (Art. 6 PCT). As the application fails to provide a **clear** definition of the term "adverse agent", nor is one generally accepted in the state of the art, the application as a whole lacks disclosure in this respect (Art. 5 PCT), and the claims referred to above lack support over the full scope of the claims (Art. 6 PCT).

2 - Claims 12, 27 and 40 include all features of claim 1, but are worded as independent claims, contrary to Rule 6.4(a) PCT. Consequently, no detailed opinion on novelty and inventive step will be given regarding these claims.

#### Novelty

1 - The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1-3, 10, 11, 57 and 61 is not new in the sense of Article 33(2) PCT (see Item III-2).

2 - Document D1 (page 4, last par - page 5, first par.; page 8, last par. - page 10, first par.; claims) discloses a powder for inhalation comprising a therapeutic agent and aerogel particles. In one embodiment, aerogel particles from e.g. glucose are prepared, followed by deposition of naltrexone base on the pores of the particles from a solution of supercritical CO<sub>2</sub>.

Consequently, claims 1-3, 10, 11, 57 and 61 lack novelty over D1.

3 - Claims 4-9, 12-56, 58-60 and 62-71 as far as allowable under Articles 5 and 6 PCT, are considered novel.

#### Inventive Step

1 - Lacking novelty, claims 1-3, 10, 11, 57 and 61 cannot be considered inventive (Article 33(3) PCT).

2 - Claims 4-9, 12-56, 58-60 and 62-71 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, (are either new or) involve an inventive step with respect to the prior art named in the present proceedings. The reasons therefor are that the additional features of the said dependent claims are either a combination of features obvious to the skilled person in consideration of document D1-D3, or they concern minor modifications which lie within the normal practice of the skilled person.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/US2005/009734

Industrial Applicability

Claims 1-68 and 71 as far as allowable under Articles 5 and 6 PCT, fulfill the requirements of Article 33(4) PCT (see Item III-1 and 2).